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Cases, Regulations and Statutes

Robert P. Achenbach Jr.
Agricultural Law Press, robert@agrilawpress.com

• Another possibility is to shift landownership to the spouse (using the 100 percent federal gift tax marital deduction)[12] with the spouse renting the land to the production entity under a non-material participation crop share, livestock share[13] or cash rent lease. For this strategy to succeed, it would be necessary for the land owning spouse not to be involved in the production entity as partner, employee or otherwise to the extent that the combined level of involvement constitutes matrerial participation. No attribution rules exist to treat spousal ownership of land in this type of setting as land ownership by the non-land owning spouse.

• Another possible strategy would be to convey the land to another entity (other than a grantor trust) with the land owning entity then entering into a lease with the production entity. Although a successful outcome (in terms of avoiding self- employment tax) is not assured, it is believed that income from self-employment would not be imputed to the entity owners.

• Finally, some may prefer to simply pay the additional self-employment tax, particularly if the amount of earned income otherwise is approaching the covered amount for OASDI purposes ($62,700 for 1996). It is important to note that HI tax now continues to apply to all self-employment income.[14]

FOOTNOTES

1 Mizell v. Comm'r, T.C. Memo. 1995-571. See generally 4 Harl, *Agricultural Law* § 37.03[3] (1996); Harl, *Agricultural Law Manual* § 4.06[3] (1996). See also Harl, "Renting Land to A Family Partnership, Corporation or LLC," 7 *Agric. L. Dig*. 49 (1996); Harl, "Renting Property to One's Corporation," 6 *Agric. L. Dig*. 57 (1995).

2 Ltr. Rul. 9637004, May 1, 1996.

3 *Id*.

4 *Id*.

5 T.C. Memo. 1995-571.

6 *Id*.

7 *Id*.

8 Ltr. Rul. 9637004, May 1, 1996.

9 I.R.C. § 1402(a)(1).

10 See Harl, "Renting Land to a Family Partnership, Corporation or LLC," 7 *Agric. L. Dig.* 49 (1996).

11 See 6 Harl, *supra* n. 1, §§ 50.03, 50.04. See also Harl, *supra* n. 1, § 7.01.

12 I.R.C. § 2523.

13 See Dugan v. Comm'r, T.C. Memo. 1995-578 (taxpayer did not physically work on ranch, did not make decisions regarding operations and seldom inspected animals; held to be non-material participation livestock share lease).

14 Pub. L. 103-66, Sec. 13207(a), (b), (e), 107 Stat. 467 (1993).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

BULL. The plaintiff was injured when the plaintiff's vehicle on a public highway struck a bull owned by the defendant. The bull had escaped from the defendant's feedlot by pushing against and jumping a five foot non-electrified fence. The evidence presented by the testimony of the defendant showed that the bull had escaped from pastures twice before, the bull had a gentle nature, hay was stored just outside the feedlot fence and the bull was usually kept within pastures with electrified fences. The defendant moved for a directed verdict after the plaintiff's case was presented and the trial court granted the motion because the plainitff failed to show that the defendant had not exercised due care in the restraining of the bull. The appellate court reversed, holding that the plaintiff, through the defendant's own testimony, had presented sufficient issues of fact concerning the defendant's exercise of due care to require the defendant to demonstrate that due care was exercised. **Nevious v. Bauer, 667 N.E.2d 1074 (Ill. Ct. App. 1996)**.

HORSES. The plaintiff owned nine horses which were boarded in Wisconsin. The horses were seized by the county humane society after the horses were found to be neglected by the stable. The humane society notified the plaintiff in Alaska that the plaintiff had to redeem the horses within five days by paying for their maintenance by the county and moving the horses to other quarters. After five days, the county declared the horses to be strays, under Wis. Stat. 951.15(3), and placed the horses for adoption with members of the society, their families and friends for nominal amounts. The plaintiff sued for recovery of the horses, arguing that the seizure and adoption of the horses deprived the plaintiff of property rights in the horses without due process. The court held that the seizure of the horses without allowing the plaintiff an opportunity for a hearing on the seizure was a violation of the plaintiff's constitutional property rights. The court also held that the random or unauthorized actions of the society members did not excuse the state from liability for the constitutional violation. **Porter v. DiBlasio, 93 F.3d 301 (7th Cir. 1996)**.

BANKRUPTCY

CHAPTER 13-*ALM* § 13.03.*

DISPOSABLE INCOME. The debtors had claimed $15,000 of equity in their homestead as an exemption. The exemption was allowed and the plan confirmed. During the plan, the house was sold with $2,654.07 in proceeds left after all expenses. The trustee argued that the proceeds were includible in the debtors' disposable income and should be applied to the plan payments. The court held that, because

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the homestead exemption applied to the proceeds of the sale of the homestead, the proceeds were not included in post-petition disposable income. ***In re* Kerr, 199 B.R. 370 (Bankr. N.D. Ill. 1996)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

DISCHARGE. The IRS filed a claim for unpaid income taxes due more than three years before the debtor filed for Chapter 13. The debtor had failed to report income in these tax years from a prisoner food program business due to an error by the debtor's tax accountant. The IRS argued that the taxes were nondischargeable under Section 523(a)(1)(C) because the debtor failed to file accurate returns and failed to fully pay the taxes owed. The court held that mere failure to file an accurate return or mere failure to pay taxes was insufficient to deny discharge of the taxes and, in addition, the IRS failed to demonstrate that the debtor should be held responsible for the errors of the tax accountant. **Matter of Burgess, 199 B.R. 201 (Bankr. N.D. Ala. 1996)**.

DISMISSAL. The debtor had filed a previous Chapter 7 case in which a federal tax claim was held to be nondischargeable because of the debtor's willful failure to pay taxes. The IRS had a tax lien on the debtor's property and had levied against the debtor's only asset, monthly social security payments. The debtor filed for Chapter 13 when the eligibility requirements were increased and the IRS moved to dismiss the case and objected to the plan, both on the grounds of bad faith. The IRS argued that, because the tax debt was the only debt involved in the case and because the debt was nondischargeable, the filing of the Chapter 13 case was in bad faith. The Bankruptcy Court held that, under its holding in *In re Gathright, 67 B.R. 384 (Bankr. E.D. Pa. 1986), app. dismissed, 71 B.R. 343 (E.D. Pa. 1987)*, there was no good faith filing requirement for Chapter 13 cases. The District Court reversed on this point, holding that the debtor's pre-bankruptcy actions to evade payment of the taxes were "cause" for dismissal of the case. The Bankruptcy Court also held that only debtor misconduct or fraud in the bankruptcy proceeding can give rise to bad faith sufficient to deny confirmation of a plan or discharge in Chapter 13. Because the debtor had accurately filed all schedules and met all Chapter 13 requirements, confirmation could not be denied for bad faith. The District Court affirmed on this point but dismissed the case based on its first holding. The appellate court held that the debtor's pre-bankruptcy tax actions could not be used as a basis for dismissal of the bankruptcy case. The appellate court, however, held that a Chapter 13 case could be dismissed for cause because of the debtor's bad faith. ***In re* Lilley, 91 F.3d 491 (3d Cir. 1996), *aff'g in part and rev'g in part*, 185 B.R. 489 (E.D. Pa. 1995), *rev'g and aff'g*, 181 B.R. 809 (Bankr. E.D. Pa. 1995)**.

EARNED INCOME TAX CREDIT. The debtor filed for Chapter 7 and claimed a portion of the debtor's 1995 refund claim attributable to an earned income tax credit as exempt under Ohio Rev. Code § 2329.66(A)(9)(e) as a disability assistance payment. The court held that the refund was not eligible for the exemption because the earned income tax credit was not intended to provide support for disabled taxpayers. ***In re* Kurilich, 199 B.R. 161 (Bankr. N.D. Ohio 1996)**.

INNOCENT SPOUSE. The IRS filed a claim for taxes resulting from disallowed charitable deductions claimed on joint returns filed for the debtor by the debtor's former spouse. The debtor claimed that the debtor's signature on the returns was forged and that the debtor had no knowledge of the claimed deductions; therefore, the debtor was entitled to the innocent spouse defense available under I.R.C. § 6013(e)(1). The court found that (1) the debtor's former spouse controlled the couple's finances and prepared the returns, (2) the debtor always intended to file joint returns with the former spouse, (3) the debtor had no knowledge of the false charitable deductions either through knowledge of the returns or from indirect knowledge, and (4) the debtor did not receive significant benefits from the improper deduction. The court held that the debtor was not liable for the taxes resulting from the disallowed charitable deduction. ***In re* Michaud, 199 B.R. 248 (Bankr. D. N.H. 1996)**.

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has issued proposed regulations adding the rapid automated presumptive test to the list of official tests for determining the brucellosis disease status of test-eligible cattle, bison and swine. **61 Fed. Reg. 48430 (Sept. 13, 1996)**.

CONSERVATION. The CCC has issued proposed regulations revising the CRP regulations, including the consolidation of all CRP regulations in 7 C.F.R. Part 1410. The new provisions include (1) inclusion of wetlands and acreage enrolled in the Water Bank Program as eligible CRP acres; (2) expansion of the conservation priority areas to include CRP acres, the Wetlands Reserve Program and the Environmental Quality Incentives Program; (3) restriction of the total CRP acres in a state to 10 percent of the total crop land; (4) provisions for an incentive of up to 25 percent of the costs of restoring wetlands; and (5) provisions for incentives to enroll filter strips, riparian buffers, field windbreaks, grass waterways, and EPA acres designated as wellhead protection acres. **61 Fed. Reg. 49697 (Sept. 23, 1996)**.

CROP INSURANCE. The FCIC has issued proposed regulations providing specific provisions for crop insurance for grapes as a grape endorsement to the Common Crop Insurance Policy. **61 Fed. Reg. 49982 (Sept. 24, 1996)**.

The FCIC has issued proposed regulations providing specific provisions for crop insurance for forage crops as a forage crop endorsement to the Common Crop Insurance Policy. **61 Fed. Reg. 48416 (Sept. 13, 1996)**.

The FCIC has issued proposed regulations providing specific provisions for crop insurance for cranberries as a cranberries crop endorsement to the Common Crop Insurance Policy. **61 Fed. Reg. 48420 (Sept. 13, 1996)**.

The FCIC has issued proposed regulations providing specific provisions for crop insurance for fresh market tomatoes as a fresh market tomatoes crop endorsement to the Common Crop Insurance Policy. **61 Fed. Reg. 48423 (Sept. 13, 1996)**.

MILK. Vermont passed a labeling law which required milk and milk product retailers to identify through signs and stickers (i.e., no product label changes were required) the milk and milk products which were produced from cows which had been injected with recombinant bovine growth hormone (rBST). The plaintiffs were various trade associations representing retailers and milk producers. The plaintiffs alleged that the labeling law violated the First Amendment and the Commerce Clause of the U.S. Constitution and sought a preliminary injunction. The defendant, Vermont, stated that the purpose of the labeling law was to inform consumers so that the consumers could make purchases based on their concerns about rBST treatment of cows and the economic and health concerns from such treatment. The District Court denied the injunction because the plaintiffs failed to show irreparable harm or likelihood of success on the merits. The court found that the costs of such labeling were minimal and easily recouped from a minimal increase in the cost of milk products. The District Court noted that the increase of production from rBST-treated cows could decrease the cost of such milk products, thus increasing the sales and profits of retailers. The plaintiffs also alleged that even the minimal loss of First Amendment freedoms was sufficient harm to support an injunction. The District Court held that the labeling law does not curtail any speech but only requires truthful statements about the milk products. The District Court also held that the plaintiffs were not likely to succeed on the merits because the labeling law did not discriminate against out-of-state producers by favoring in-state producers, since all producers are subject to the same labeling requirements and both in-state and out-of-state producers produce both kinds of milk products. The District Court also noted that the state had a legitimate interest in providing its consumers with full information about retail products and that the labeling law was passed in response to a variety of public concerns over milk products from rBST treated cows. The District Court held that the labeling law did not violate the First Amendment because the speech involved here was commercial speech which could be restricted by a substantial governmental interest, such as truthfully informing consumers. The appellate court reversed, holding that the potential infringement of First Amendment free speech right was sufficient to allow a preliminary injunction. The appellate court also held that the milk retailers had also shown a likelihood of success on the merits in that Vermont had failed to demonstrate a substantial interest in the labeling of milk, because the only identified interest was the interest of consumers and the public's right to know. The appellate court noted that no public safety issue was involved because the FDA had determined that rBST was not a health hazard to humans. **International Dairy Foods Ass'n v. Amestoy, 92 F.3d 67 (2d Cir. 1996), *rev'g*, 898 F. Supp. 246 (D. Vt. 1995)**.

PERISHABLE AGRICULTURAL COMMODITIES ACT-*ALM* § 10.05[2].* The petitioner was a PACA-licensed produce handler. The petitioner was asked by a customer to relabel shipments of New Zealand apples so that the apples appeared to be Washington state apples. The petitioner knew that the apples would be sold to third parties in the mislabeled state. The petitioner eventually shipped 7,554 mislabeled cartons to the customer. The USDA revoked the petitioner's PACA license for flagrant, repeated and willful violations of PACA, 7 U.S.C. § 499b(5). The appellate court upheld the Judicial Officer's holding that the petitioner's conduct was intentional, deliberate and knowing and thus constituted a flagrant violation of PACA. The court noted that although the number of cases shipment mislabeled was not sufficient by itself to demonstrate flagrant conduct, the large number of cases helped support that ruling. The petitioner also argued that the conduct was not willful because the buyer was not misled by the mislabeling since the customer requested the mislabeling. The court held that the mislabeling was willful because the petitioner received a special commission for the act, provided a demonstration of how well the mislabeling would work, expressed doubts to the customer about the propriety of the act and shipped more than 7,000 cases of mislabeled apples. The petitioner also argued that the full revocation of the license was too strong a sanction and the JO had failed to consider mitigating circumstances such the fact that the petitioner was no longer in business because of the violations. The appellate court upheld the revocation as supported by the evidence. **Potato Sales Co., Inc. v. Dept. of Agriculture, 92 F.3d 800 (9th Cir. 1996)**.

WETLANDS. The plaintiff owned wetlands which the plaintiff wanted to drain for crop production. The plaintiff started the draining in 1984 and filed in 1986 for a commenced-conversion determination under the Swampbuster provisions to allow the draining to continue. The conversion plan was approved but did not include any alteration to culverts under a road bordering the wetlands. The plaintiff found that the draining would not occur unless these culverts were lowered. The plaintiff had the culverts lowered and the ASCS ruled that existing work would be considered as part of the previous commenced-conversion determination but the plaintiff could not do any more conversion work on the wetlands. The plaintiff argued that without the lowering of the culverts, the original conversion plan could not have been realized and that the road was a man-made barrier which could be altered without violation of the conversion plan. The District Court held that the road was not shown to be a cause of the wetlands; therefore, the altering of the culverts was part of the conversion and was subject to the Swampbuster provisions. The District Court also held that the conversion exception was strictly construed and did not provide any provision for the converter's intent in commencing the conversion to allow additional work to meet the conversion exception without prior approval of the ASCS. Finally, the District Court held that the plaintiff failed to show any financial hardship from denial of the further conversion work since the plaintiff had not contracted to have the additional work done or otherwise expended money to have the work done. The appellate court affirmed, finding that the ASCS and the Distict Court decisions were not arbitrary. **Von Eye v. U.S., 92 F.3d 681 (8th Cir. 1996), *aff'g*, 887 F. Supp. 1287 (D. S.D. 1995)**.

FEDERAL ESTATE AND GIFT TAX

DISCLAIMERS-*ALM* § 5.02[6]. * The decedent died in 1994 and had been the executor of the estate of a predeceased spouse. The predeceased spouse's will

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provided that if the decedent disclaimed any bequest, the disclaimed property passed to a family trust for the benefit of the couple's child. The decedent had prepared a ledger of estate accounts and activity occurring during estate administration. The decedent also prepared an inventory of estate property. The couple's attorney had sent a letter to the couple when the predeceased spouse's will was drawn up and the letter indicated that the will made provisions for post-death planning by use of disclaimers. The IRS ruled that none of the documents, alone or together, qualified as a disclaimer for estate tax purposes because the documents did not contain any language which could be construed as the decedent's unequivocal renunciation of property bequeathed to the decedent. **Ltr. Rul. 9640005, June 14, 1996)**.

In 1989, the taxpayer had established a 10-year grantor retained annuity trust (GRIT). In October 1989, pursuant to IRS Notice 89-99, the taxpayer disclaimed any interest in the reversionary interest in the GRIT and a power of appointment provided by the GRIT. A gift tax return was filed for the gift tax effects of the disclaimer. In 1990, I.R.C. § 2036(c) was retroactively appealed. The taxpayer then obtained a state court order retroactively disregarding the disclaimer. The taxpayer argued that the repeal of I.R.C. § 2036(c) and the state court order removed the gift tax liability for the disclaimer. The court held that, under *Van Den Wymelenberg v. United States, 397 F.2d 443 (7th Cir. 1968)*, a retroactive reformation of a disclaimer was not effective to change the original tax consequences of the disclaimer. **Lange v. United States, 96-2 U.S. Tax Cas. (CCH) ¶ 60,244 (N.D. Ind. 1996)**.

GROSS ESTATE-*ALM* § 5.02.* The decedent had been a beneficiary of a testamentary trust created by the will of the decedent's pre-deceased mother. The trust provided the decedent with the power to "use the income and so much of the principal as in her sole discretion shall be necessary and desirable." The court held that the trust granted the decedent a general power of appointment over the trust corpus and that the trust corpus was included in the decedent's gross estate. The court found no state law to interpret the trust language and found that the language allowed distribution of trust corpus for uses beyond the decedent's health, education, and/or support or maintenance. **Hyde v. United States, 96-2 U.S. Tax Cas. (CCH) ¶ 60,243 (D. N.H. 1996)**.

TRUSTS. The taxpayer was a beneficiary of a testamentary trust. The trust was funded with stock, and the trustee borrowed funds on margin from a brokerage account and loaned the money to the decedent's estate and corporations owned by the estate. The loans were not evidenced by repayment schedules, fixed maturity dates or notes but the loans were ratified by the estate representatives and the boards of directors of the corporations. The estate did not have any distributable net income (DNI) for the tax years involved but paid the trust interest on the loans. The taxpayer argued that because the estate had no DNI, the trust did not have any DNI from the interest payments. The court held that the taxpayer had to include distributions from the trust in gross income because the interest payments were DNI to the trust. **Geftman v. Comm'r, T.C. Memo. 1996-447**.

VALUATION. The taxpayer transferred a personal residence and 43 contiguous acres to a three year personal residence trust. The property also has a swimming pool, pool house, greenhouse, tool shed, barn with attached corral and quarters for a caretaker. The entire parcel had been used as a personal residence property for over 100 years and the neighboring properties are of similar size and use. The IRS ruled that the trust was a qualified personal residence trust under I.R.C. § 2702(a)(3)(A)(ii). **Ltr. Rul. 9639064, June 27, 1996**.

FEDERAL INCOME TAXATION

ALTERNATIVE MINIMUM TAX-*ALM* § 4.01.* A husband and wife operated a potato farm and sold potatoes to various buyers under agreements which deferred some portion of the selling price until the following tax year. The IRS examining agent did not object to the deferral for regular income tax purposes but took the position that the arrangement was subject to the alternative minimum tax rules applicable to "the installment method under [I.R.C.] section 453." The Service agreed with the agent, relying on *Warren Jones Co. v. Comm'r, 524 F.2d 788 (9th Cir. 1975), rev'g, 60 T.C. 663 (1973),* in concluding that the tax treatment of a deferred payment obligation depended upon whether the fair market value of property received in exchange can be ascertained. In addition, the Service ruled in the TAM that the outcome of the ruling involves a change of accounting method. Further, IRS indicated that I.R.C. § 481 applies in determining the farmers' tax for the year of change. This ruling is discussed in an article by Neil Harl in 7 *Agric. Law Digest*, p. 93 *supra*. **Ltr. Rul. 9640003, Dec. 21, 1995**.

BIOMASS FUELS CREDIT. The taxpayer was a lumber and veneer company which used scrap wood in a gasifier to produce heat used in the veneering process. The taxpayer leased a portion of its facility to another company. The leased area was to be used for making veneer with the second company's equipment. The lease required the taxpayer to furnish utilities for the leased area. The taxpayer claimed a biomass fuels credit for the heat provided to the leased area from the gasifier. The court held that the taxpayer was not eligible for the credit because biomass fuel was not sold to the second company; instead, the taxpayer sold only heat. In addition, the court held that no sale occurred because the utility costs were included in the rent for the space. **Norstam Veneers, Inc. v. Comm'r, T.C. Memo. 1996-443**.

CHARITABLE DEDUCTION. Under an agreement with a charity, the taxpayer purchased a house and leased the house to the charitable organization for one dollar per year. The house was purchased and leased to the organization for the purpose of having the organization renovate the house for use by the organization in its charitable work. Once the renovations were completed, the taxpayer intended to donate the house to the organization. The organization used other donations and volunteer help to substantially improve the property and the taxpayer donated the house to the organization. The taxpayer argued that the amount of the charitable deduction should equal the fair market value of the house at the time of the final donation. The IRS ruled that the charitable deduction was limited to the taxpayer's basis in the property, the original purchase price, because the taxpayer did not own the renovations or pay for them. **Ltr. Rul. 9639009, June 13, 1996**.

C CORPORATIONS-*ALM* § 7.02.*

COMPENSATION OF OFFICERS. The taxpayers were brothers who shared the ownership of a corporation which operated a scrap metal business. An IRS audit in two tax years found that the corporation failed to report income from the sale of scrap metal in each year. The corporation admitted to the errors but claimed an offsetting deduction, claiming that the income was paid to the taxpayers as compensation. The corporation did not list the payments as compensation in the corporate records nor did the corporation include the payments in the taxpayers' W-2 forms. The only evidence that the payments were intended as compensation was the personal income tax returns of the taxpayers for the second tax year. The court held that the corporation was not allowed a deduction for the payments as compensation because the corporation had no contemporaneous records of any intent to make the payments as compensation. **Tool Producers, Inc. v. Comm'r, 96-2 U.S. Tax Cas. (CCH) ¶ 50,495 (6th Cir. 1996)**.

CONSTRUCTIVE RECEIPT. A state's lottery laws were amended to allow lottery winners to assign future installment payments of lottery winnings. The IRS ruled that the assignment of future installment lottery payments did not amount to constructive receipt of the future payments by the assignor, because the assignment did not affect the dates of the payments by the state lottery commission. **Ltr. Rul. 9639016, June 17, 1996**.

EMPLOYEES. The taxpayer operated a sod laying and landscape business which employed 16 people. The workers consisted of a bookkeeper/secretary, graders, sodlayers, truck drivers and one landscaper. The taxpayer treated all of the workers as independent contractors and the workers all signed agreements of understanding which included an agreement to pay their own self-employment taxes. The bookkeeper and main company truck driver were held to not be independent contractors because the taxpayer exercised sufficient control over their work and these employees worked only for the taxpayer. The Bankruptcy Court, however, had ruled that the taxpayer was not liable for the employment taxes for these employees, under I.R.C. § 3401, because the taxpayer had a reasonable basis for treating them as independent contractors. The appellate court reversed on this issue, holding that treating these employees as independent contractors was not reasonable under any judicial precedent, IRS audit or long-standing industry practice. As to the other workers, the court held that they were properly classified as independent contractors because (1) the taxpayer did not provide instruction to these workers, (2) the workers had the authority to hire other workers, (3) the work hours were not set by the taxpayer, (4) the workers were not paid at set intervals, (5) the workers made their services available to other sodlaying and landscaping companies, and (6) the industry practice was to treat these workers as independent contractors. ***In re* Arndt, 96-2 U.S. Tax Cas. (CCH) ¶ 50,505 (M.D. Fla. 1996)**.

INTEREST. The taxpayers owned several businesses operated as partnerships and S corporations. The taxpayers made pre-1986 payments of tax deficiencies and interest in order to take advantage of the pre-1986 interest deductions. The taxpayers, however, claimed the interest payments as business interest deductions, whereas the IRS allowed the deductions only as personal interest deductions. The taxpayers argued that the interest resulted from the income generated by the businesses; therefore, the interest payments were business expenses. The court held that, because partnerships and S corporations do not pay taxes, the interest on taxes was not related to the businesses and was eligible only for a personal interest deduction. The IRS had also argued that interest on taxes was never a business expense because normal business activity should include timely payment of taxes. The court did not discuss this issue. **True v. United States, 96-2 U.S. Tax Cas. (CCH) ¶ 50,502 (10th Cir. 1996)**.

LIFE INSURANCE. A grantor trust was a general partner in a partnership. The trust purchased a life insurance policy on the grantor/trustee's life. The trust, partnership and grantor/trustee entered into an agreement under which the trust owned the policy and the partnership paid the premiums but would be reimbursed in part by the trust. The policy was assigned to the partnership as security for the trust's promise to pay the premiums. The partnership had the right to collect from the policy proceeds (either the death benefit or cash surrender value) the amounts paid in premiums, with the remainder paid to the trust. This is a split-dollar insurance arrangement. The IRS ruled that neither the trust nor grantor/trustee would be deemed to have received a distribution from the partnership. **Ltr. Rul. 9639053, June 20, 1996**.

RETURNS. The IRS has issued new guidelines for ordering Audit Technique Guides produced by the IRS Market Segment Specialization Program. Purchasers may now use credit cards for the purchases by phone (202-512-1800), fax (202-512-2250), mail (Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954), or the internet(http://www.access.gpo.gov).

S CORPORATIONS-*ALM* § 7.02[3][c].*

REORGANIZATION. The taxpayer was an S corporation which formed a second shell corporation for the purposes of merging the two corporations with the new corporation as the surviving corporation. The reorganization was intended to qualify as an I.R.C. § 368(a)(1)(F) (type F) reorganization. The IRS ruled that the merger would not change the S corporation status of the old corporation and the new corporation would qualify as an S corporation. The IRS also ruled that Rev. Rul. 57-276, 1957-2 C.B. 126 provided guidance for determining the effect of the reorganization on the taxable year of the corporations, and Rev. Rul. 73-526, 1973-2 C.B. 40 provided for transfer of the taxpayer identification number of the old corporation to the new corporation. **Ltr. Rul. 9639059, June 26, 1996**.

SHAREHOLDER BASIS. The taxpayer owned 98 percent of an S corporation with one other shareholder. The taxpayer and corporation each obtained loans from a bank and entered into a cross-collaterization and cross-default agreement which secured the loans with all the property of the shareholder and corporation, including subsequent improvements. The shareholder constructed a building and first leased it to the corporation before transferring the building to the corporation in exchange for 400 shares of stock in an I.R.C. § 351 transaction. The parties' loan obligations were not affected by the transaction. The taxpayer argued that the basis of the 400 shares of stock was equal to the shareholder's basis in the building before the transfer. The IRS ruled that because the building was subject to liabilities in excess of the shareholder's basis in the building, the shareholder's basis in the stock was zero plus any gain recognized by the transaction. **Ltr. Rul. 9640001, Nov. 29, 1994**.

TAX LIENS. A decedent's estate included improved real property. In February 1991, the estate executor entered into a contract to sell the property for $152,000; however, the buyer paid only $76,000. The parties testified that they had orally agreed to the lesser price and that the contract price was set to fool the public. The buyer presented evidence to the probate court that $152,000 was paid for the property. The property was actually worth $359,000 and the estate recognized a loss on the sale. The deed for the property was recorded in October 1991 and showed a purchase price of $152,000. On October 30, 1991, the IRS recorded a tax lien against the estate for unpaid federal estate taxes. The issue was whether the buyer of the property was a "purchaser" under I.R.C. § 6323(a) against whom the tax lien could not be enforced. The court held that because the buyer did not pay full and adequate consideration for the property, either as evidenced by the purchase agreement or the actual fair market value, the buyer was not a "purchaser" and the tax lien was effective against the property. **A & B Steel Shearing & Processing, Inc. v. United States, 96-2 U.S. Tax Cas. (CCH) ¶ 50,506 (E.D. Mich. 1996)**.

TRAVEL EXPENSES. The taxpayer was employed as a college physics professor and self-published a book on physics. The taxpayer also presented public seminars at an airport within walking distance of the taxpayer's college office. The taxpayer made several trips to popular cities and visited the tourist attractions there. While in each city, the taxpayer would visit book stores without prior notice and would attempt to make some book sales. The taxpayer claimed deductions for automobile expenses in driving to the seminars and travel expenses for the visits to the cities. The court held that the travel expenses for the visits to the cities were not deductible business expenses because the primary purpose of the visits was for personal pleasure. The court also held that the automobile expenses for driving to the seminars was not deductible because the trips were primarily for commuting to the taxpayer's place of employment. **Shelton v. Comm'r, T.C. Memo. 1996-444**.

NEGLIGENCE

LICENSEE/INVITEE. In a case involving a slip and fall at a hospital, the Nebraska Supreme Court held that the common-law classification of licensee and invitee would be abolished in favor of a duty of reasonable care for all nontrespassers on property. **Heins v. Webster County, 552 N.W.2d 51 (Neb. 1996)**.

STATE REGULATION OF AGRICULTURE

KIWIFRUIT. Calif. Food & Agirc. Code § 68001 et seq., created the California Kiwifruit Commission for the purpose of advertising, marketing research and production research for the state kiwifruit industry. The commission was funded by 3.5 percent assessments on the sales of fresh market kiwifruit. The defendant was a kiwifruit grower and challenged the assessments as violating the defendant's constitutional associational rights. The court applied a strict scrutiny standard and held that the Commission failed to show a compelling state interest in the kiwifruit industry which could not be achieved with less restrictive means. The court found that the Commission failed to show that it's efforts produced any effect at all on the kiwifruit industry. **California Kiwifruit Comm'n v. Moss, 53 Cal. Rptr. 2d 138 (Cal. App. 1996)**.

STATE TAXATION

FARMER. The plaintiff owned a farm which was enrolled in the Vermont Working Farm Tax Abatement Program (WFTAP) under which the plaintiff was assessed lower property taxes on the farm. The WFTAP required the repayment of the abated taxes if the property was sold to someone other than a farmer, which was defined as persons who received more than 50 percent of their income from the operation of a farm on the abatement property. On December 29, 1993, the plaintiff sold the farm to a couple, one of whom worked as a university professor and the other worked as a public school teacher. The plaintiff argued that the purchasers began receiving more than 50 percent of their income from farming as soon as the property was purchased but failed to provide any evidence to support this claim. The state provided evidence of the purchasers' 1993 income tax returns and a conversation with the purchasers to determine that the purchasers did not receive more than one-half of their income from the farm. The court held that the plaintiff was required to repay the property tax benefits because the plaintiff failed to prove the purchasers were farmers. The court also ruled that a 1995 amendment to the WFTAP did not retroactively apply to liberalize the definition of farmer as to the purchasers. **Vallee v. State, 678 A.2d 1255 (Vt. 1996)**.

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